

The Odisha Gazette



EXTRAORDINARY PUBLISHED BY AUTHORITY

No. 2658 CUTTACK, FRIDAY, DECEMBER 9, 2011/MARGASIRA 18, 1933

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 28th November 2011

No. 10714—li/1-(B)-55/1991(Pt.)-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 5th September 2011 in I. D. Case No. 124/1991 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of M/s Rastradoot, Balasore and its Workman Shri Somanath Sahu represented by Orissa Union of Journalist, Bhubaneswar was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 124 OF 1991

Dated the 5th September 2011

Present :

S. A. K. Z. Ahamed,
Presiding Officer,
Labour Court, Bhubaneswar.

Between :

The Management of . . . First-party—Management
M/s Rastradoot, Balasore.

And

Shri Somanath Sahu . . . Second-party—Workman
represented by the Secretary,
Orissa Union of Journalist, Unit-II,
Ashoknagar, Bhubaneswar.

Appearances :

None	... For the First-party—Management
None	... For the Second-party—Workman

AWARD

The Government of Odisha in exercise of powers conferred by sub-section (5) of Section 12, read with Clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act have referred the matter in dispute to this Court vide Order No. 7569—li/(B)-I-55/1991-LE., dated the 27th May 1991 of the Labour & Employment Department, Bhubaneswar for adjudication.

2. The terms of reference is as follows :—

- (A) "Whether the termination of services of Shri Somanath Sahu, ex-Principal Correspondent of the Rastradoot, Balasore with effect from the 1st October 1990 is legal and/or justified ? If not, to what relief he is entitled ?"
- (B) "Is the claim of Shri Somanath Sahu, ex-Principal Correspondent of the Rastradoot for payment of wages as per the recommendation of the Wage Board for Working Journalists from the date of his engagement by the Newspaper Establishment of Rastradoot, Balasore is legal and/or justified ? If so, what should be details ?"

3. The workman's case in brief, as set out in his statement of claim is that he was working as a Working Journalist and engaged as a reporter/correspondent under the management from the 3rd October 1981. He was confirmed as a State Level Correspondent in the month of January, 1987 and was elevated to the status of Principal Correspondent on Dt. 1-1-1988. He was accorded accreditation to Government of Odisha on application, Dt. 3-1-1988 by the management. He has claimed wages applicable to the Working Journalists, as he has been recommended by the Wage Board for such Working Journalists. When he protested and demanded payment of all his outstanding wages as per the recommendation of the Wage Board, the management stopped his wages from January, 1991. The workman personally and through the Union protested against such unfair and illegal action of the management for which he was put to further harassment by the management and ultimately his service was terminated with retrospective effect from the 1st October 1990, through a public notice published on Dt. 18-10-1990 in the newspaper of the management. The workman alleged that no charges having been framed against him and no enquiry having been conducted by the management prior to his termination, his termination from service is illegal and he is entitled to reinstatement with full back wages and other statutory dues. The workman moved the labour authority who intervened and conciliation was failed due to nonco-operation of the management. Hence this case.

4. On the other hand, the management in his written statement has stated that the workman was not a Working Journalist under the management as alleged and the management had never posted the workman as a news correspondent in Bhubaneswar. The management in its written statement has stated that the case of the workman is based on false, frivolous, concocted and fictitious facts. According to the management, the workman is not entitled to the wages as per the recommendation of the Wage Board. The management denied to have stopped payment of the workman with effect from January, 1991. According to it, the workman was a Bureau Chief of Utkal News Service Agency (for short U.N.A.), Bhubaneswar in the year 1986 and during that period the workman requested the management to publish the news of U.N.A. in the newspaper of the

management. In this way the workman established relationship with the management only from Dt. 23-11-1986 which fact is evident from the letter No.279-UNA/1986 of the workman. Subsequently when the management enlarged the size of its Newspaper 'Rastradoot' from Dt. 7-1-1987, the management appointed the workman on a honorary correspondent at Bhubaneswar with effect from the 30th January 1987. On the request of the workman, the management applied to the Government for grant of State Level Accrediation to the workman. The workman subsequently enjoyed the accreditation and other facilities were availed by the accredited correspondent from the State Government. The management has alleged that by taking advantage of sympathy of the management, the workman has mischievously corrected the date of appointment to be Dt. 3-10-1981 and the management had signed the same on good faith and on the *bona fide* belief. The management further alleged that after availing all Government facilities available to a correspondent, the workman stated neglecting his performance with regard to circulation and reporting. The workman also deviated by making payment of the bills of the management on different pretext and at the same time started publishing a newspaper titled to be the 'Devdoot' from Bhubaneswar as its Printer, Publisher and Editor, while using the quarter and telephone allotted in the name of the management. So the management was compelled to stop the relationship with the workman and has urged that the workman is not entitled to any claim put forth by him.

5. In view of the above pleadings of the parties, the following issues are settled :

ISSUES

- (i) "Whether Principal Correspondent Somanath Sahu had a continuous service to fulfil the requirement of workman ?
- (ii) Was there any valid termination for cessation of work, if not, in what manner the management terminated the service with effect from the 1st October 1990 ?
- (iii) Is the claim of wages by the workman according to Wage Board recommendation acceptable and binding on the management and was the workman a Working Journalist there ?
- (iv) To what relief ?"

6. After giving reasonable opportunity of hearing in view of the orders passed by the Hon'ble High Court of Orissa, Cuttack in O.J.C. No. 4821 of 1996, Dt. 6-8-2008, both the parties remained absent in spite of notices issued by this Court. So basing upon the evidence already available on record it is now necessary to discuss the same while passing the Award.

7. During the course of hearing prior to the orders passed by the Hon'ble High Court of Orissa, Cuttack, it appears that the workman has been examined from his side and no witness has been examined from the side of the management. The workman during his evidence in this Court has fully corroborated the facts stated by him in his statement of claim and denied the averments made by the management in its written statement. In addition to it, the workman has filed number of documents and proved the same under the cover of Exts. 1 to 38. From the side of the management 8 documents have been exhibited and marked Exts. A to G.

8. In order to answer all the four issues, it is necessary to know whether the workman had connection with the management from the year 1981. Then it is to be seen whether the workman being a newspaper correspondent comes under Working Journalist or not and he is entitled to the wages as per the recommendation of the Wage Board or not. The management's case is that the workman had connection with them only from Dt. 23-11-1986 and not prior to it and was only an

Agent for the management at Bhubaneswar and categorically denied the allegations of Working Journalist. In addition to it, the workman was involved in different news gathering agencies and was also a Publisher, Printer and Editor of a newspaper 'Devadoot' of Bhubaneswar which is an independent establishment completely separate from the management of 'Rastradoot' news agency of Balasore. Out of the documents filed from the side of the management, Ext. A is the letter addressed by the workman to the Editor of daily newspaper 'Rastradoot', Dt. 23-11-1986. In Ext. A it appears that the workman had formed a News Service Agency named as Utkal News-Service Agency (for short U.N.A.) wherein he acted for the last one and half years and supplying the news to different newspaper of Odisha and requested the management to publish the news sent by U.N.A. Ext. B is a letter of workman to Upendra Babu of 'Rastradoot' sent in printed sheet of U.N.A. relating to the information to the management to sent the copy of 'Rastradoot' as usual in the bus instead of sending the same in train. Ext. C is the daily newspaper 'Devadoot' wherein the name of the workman appears to be Publisher, Printer, Editor and owner. A special notice was also published in Ext. C to that effect. Ext. D reveals regarding receive of news items by different newspaper publishers from Information & Public Relations Department. In Sl. No. 50 the name of the workman finds place as correspondent of U.N.A. Ext. E is the letter despatched from Deputy Director and Deputy Secretary (Advertisement) to the Director of Culture, Odisha, Bhubaneswar, regarding payment of advertisement bills by different newspapers where newspaper of the workman 'Devadoot' finds place for payment of bills from Dt. 22-3-1994. The management has also filed the monthly journal Expo Orissa under the cover of Ext. F, but the same does not reveal in which way the workman was concerned with it. Ext. G is the *Odisha Gazette* where the Award of the Labour Court has been published with the finding to the effect that the part-time journalists of M/s Prajatantra, Cuttack are not the employees or workmen and they are not entitled to the benefits of the recommendation of Wage Board, accepted by the Government of India. On perusal of the above documents and on scrutiny of the same it is clear that the workman was a Printer, Publisher, Editor and owner of the daily newspaper 'Devadoot' of Bhubaneswar in April, 1990. He has also formed U.N.A. since 1985 and was receiving news items from the Information & Public Relations Department and at the same time i.e., in February, 1987 he was working as news correspondent or reported on behalf of daily 'Rastradoot' (Management) and he was not merely an Agent of the 'Rastradoot' of the management. It has clearly mentioned in Ext. B that if any identity card of Agent of daily 'Rastradoot' has been issued, the same may be sent to him by the management to supply the same to the concerned Agent.

9. On the other hand, on perusal of the documents filed by the workman it appears that Exts. 1 to 5 are the letters addressed by one Upendra Babu on behalf of the 'Rastradoot' (Management) to the workman for different purposes. Ext. 6 is the letter addressed to the Director, Information & Public Relations Department, Government of Odisha by the management to inform that the workman was appointed as Correspondent of daily 'Rastradoot' for the capital headquarter, Bhubaneswar. Ext. 7 is a publication in the 'Rastradoot' daily newspaper itself on Dt. 31-1-1987 to the effect that the workman was appointed as a news correspondent of State Cadre of the 'Rastradoot' newspaper. Ext. 8 was addressed to the Speaker, Odisha Legislative Assembly by the management of 'Rastradoot' to issue Press Pass in favour of the workman, Dt. 2-2-1987. Ext. 9 is the letter, Dt. 25-5-1987 where the management of 'Rastradoot' wrote a letter to the Deputy Secretary, G.A. Department to issue Secretariat entry pass in favour of the workman for entry into the Secretariat building for collection of news. Ext. 10 issued on Dt. 20-10-1987 from the Joint Director of Information & Public Relations to the Under-Secretary to Government, G.A. Department regarding application of the workman as there was no other State Level Accredited Correspondent

of 'Rastradoot' at Bhubaneswar. Ext. 11 is the Press Reporter Pass and Card of the workman issued by the management on Dt. 20-1-1987. Ext. 12 is the application for accreditation of press correspondents, Dt. 3-1-1988 where the name of the workman finds place. Ext. 13 is another Press Pass of the workman of the year 1988. Ext. 14, Dt. 6-2-1990 the management of 'Rastradoot' authorised the workman to represent daily 'Rastradoot' for coverage news items and Assembly Proceedings. Ext. 15 is the letter of the Labour Commissioner informed to the Joint Director of Information & Public Relations-cum-Deputy Secretary to Government wherein it has been mentioned that the workman had been employed as Journalist for the daily 'Rastradoot' since Dt. 3-10-1981. Besides the above, the rest documents are also relating to the relationship of the workman with the management. All these documentary evidence have not been disproved by the management and the only plea of the management is that the appointment date 1981 has been manipulated by the workman and the concerned authority of the management had signed the same by overlooking the year. On the above score, the management has not led any evidence to establish its plea without which such general plea is not believable. Nothing has been cross-examined to the workman to impinge his testimony. So from the documentary evidence of both the sides, there is no doubt that the workman worked as newspaper reporter/respondent on behalf of the management and that too stationed at Bhubaneswar.

10. Now, it is to be seen whether the workman on the strength of the news correspondent can be regarded as a Working Journalist or not under the management. From the oral and documentary evidence adduced from the side of the workman it is very clear that the workman was getting remuneration from the management during tenure of his work, so also the management controlled the work of the correspondent from time to time by issuing different correspondences. From the nature of service, it is quite evident that there was master and servant relationship between the management and the workman respectively. Law is well settled that the newspaper correspondent be treated as Working Journalist. At the same time it has been indicated in the said decision that facts of each case is to be taken into consideration for reaching the conclusion whether any newspaper correspondent or reporter can be regarded as Working Journalist or not. In view of the discussion made in the foregoing paragraphs, the nature of service of the workman amounts to count him as a Working Journalist.

11. As the workman is treated in the foregoing paragraphs as a Working Journalist in the facts and circumstances of this case, it is to be seen whether the workman is entitled to the wages as per the recommendation of the Wage Board or not. On this point the management filed Ext. G which is an Award passed by the Labour Court of the year 1993 wherein it has been concluded that the part-time journalist of M/s Prajatantra, Cuttack are not the employees or workmen and they are not entitled to the benefits of recommendation of Wage Board. The finding of the earlier Award of this Court is neither binding nor can be taken as a guideline for deciding the factum of another case. In this connection it has been held that the Government of India in its Notification, Dt. 27-10-1967 has accepted the recommendation of the Wage Board. In other words, it has been intended to be given effect to the Working Journalists. In the Working Journalist Act, Section 2(c), definition of newspaper employee has been given. It reads :

"Newspaper employees means any Working Journalist and includes any other person employed to do any work in, or in relation to, any newspaper establishment."

As such, recommendation of the Wage Board for Working Journalist is applicable to the workman and his claim as per recommendation of the Wage Board is legal and justified. The workman has claimed his remuneration as per Wage Board since his engagement under the management. The

workman is not a ordinary workman under Industrial Disputes Act. He had worked as a correspondent of the management. Whether he was a Working Journalist or Non-working Journalist and whether he is entitled to the benefits of the Industrial Disputes Act or not is a complicated question and difficult to know it without proper adjudication. As per earlier discussion, the workman deserves to get the remuneration as per the recommendation of the Wage Board as a Working Journalist. It cannot be presumed or taken a conjecture that the management was well aware of such facts and deliberately deprived the workman from getting his legal dues as per the recommendation of the Wage Board. The workman has also not raised his dispute to get his legal dues as per the recommendation of the Wage Board prior to 1990. So it will be proper and just to give the benefits of recommendation of the Wage Board to the workman from the date of his illegal termination, but not from the date of his appointment in the year 1981.

12. Hence it is Ordered :

(A) That the termination of services of Shri Somanath Sahu, ex-Principal Correspondent of the 'Rastradoot', Balasore with effect from the 1st October 1990 is neither legal nor justified. He is entitled to be reinstated in service with full back wages.

(B) That the claim of Shri Somanath Sahu, ex-Principal Correspondent of the 'Rastradoot' for payment of wages as per the recommendation of the Wage Board for Working Journalists is legal and justified. He is entitled to get the wages as per the recommendation of the Wage Board for Working Journalists from the date of termination, i.e. from the 1st October 1990 only, but not from the date of his engagement by the Newspaper Establishment of 'Rastradoot', Balasore. Further, direction is given to the management to reinstate the workman Shri Somanath Sahu within one month and to pay wages as per recommendation of the Wage Board for Working Journalists within two months after publication of the Award.

The reference is answered accordingly.

Dictated and corrected by me.

S. A. K. Z. AHAMED

5-9-2011

Presiding Officer

Labour Court, Bhubaneswar

S. A. K. Z. AHAMED

5-9-2011

Presiding Officer

Labour Court, Bhubaneswar

By order of the Governor

T. K. PANDA

Under-Secretary to Government